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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Julia Gowan,

10 Plaintiff,

11 v.

12 Denis R. McDonough, *et al.*,

13 Defendants.
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No. CV-22-00210-PHX-JJT (JZB)

ORDER

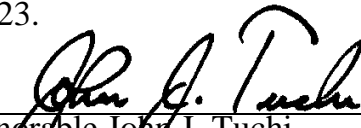
15 At issue is the Report and Recommendation (Doc. 22, “R&R”) entered in this matter
16 by United States Magistrate Judge John Z. Boyle recommending that Plaintiff’s claims
17 against Defendants Lopez and Wright be dismissed without prejudice pursuant to Rules
18 4(m) and 41(b) of the Federal Rules of Civil Procedure. In the R&R, Judge Boyle advised
19 the parties that they had 14 days from its service to file specific written objections, and that
20 failure to so file timely objections “may result in the acceptance of the Report and
21 Recommendation by the district court without further review [and] failure to file timely
22 objections to any factual determinations of the Magistrate Judge will be considered a
23 waiver of a party’s right to appellate review of the findings of fact in an order of judgment
24 entered pursuant to the [R&R].” (R&R at 6-7.) Thirty-eight days have elapsed since the
25 parties were deemed served with the R&R through ECF publication and Petitioner has filed
26 no objections, timely or otherwise. The Court therefore may accept the R&R without
27 further review pursuant to *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
28 2003) and Petitioner’s right of appellate review over any factual determinations in the

1 Court's judgment are considered waived pursuant to Fed. R. Civ. P. 72. This Court
2 nonetheless conducted an independent review of the R&R, and upon doing so, concludes
3 Judge Boyle's findings and recommendations are correct. Service of Defendants Lopez and
4 Wright was not within the 90 days allotted in Rule 4(m), which expired June 13, 2022.
5 Even now, nearly seven months later, sufficient proof of service of these defendants is
6 absent, despite multiple opportunities and warnings to provide it, as Judge Boyle pointed
7 out. Similarly, under Rule 41(b), dismissal is proper for Plaintiff's failure to comply with
8 this Court's Orders, respond to the Orders to Show Cause, or otherwise prosecute this case,
9 without excuse. Therefore

10 **IT IS ORDERED** adopting the R&R (Doc. 22) in full.

11 **IT IS FURTHER ORDERED** dismissing without prejudice this matter as against
12 Defendants Lopez and Wright only pursuant to Rules 4(m) and 41(b), Fed. R. Civ. P.

13 Dated this 13th day of January, 2023.

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16 Honorable John J. Tuchi
17 United States District Judge
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